NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT VI

Item No. P-1

C.P.(IB)/1122(MB)2025

CORAM

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING DATED **13.03.2026**

NAME OF THE PARTIES **:** **Union Bank Of India Limited**

Vs.

Vitthal Corporation Limited

Under Section 7 of the IBC, 2016.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//frk//

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – VI

CP(IB)/1122/MB/2025

(filed Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016)

In the matter of

Union Bank of India. Through

Mr. Prashant Ramswami Surekar

Branch Manager

Having registered office address at:

Union Bank Bhavan, 239,

Vidhan Bhavan Marg, Nariman Point,

Mumbai-400021 Branch address at:

Kumbhar Ves, Solapur

and the Regional Office, 1411 C Maya Chambers,

Laxmipuri, Kolhapur, Maharashtra -416002

... Applicant/Financial Creditor

Vs.

Vitthal Corporation Ltd.,

Erstwhile Vitthal Sugar Manufacturing Ltd.

Flat No. 104, Suwarnanand Park,

Plot no. 4849 Laxmi Park Colony, Navi Peth,

Pune, Maharashtra -411030

... Respondent/Corporate Debtor

Order pronounced on 13.03.2026

CORAM :

SH. NILESH SHARMA, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE (IN HYBRID MODE)

For Financial Creditor: Adv. Mr. Ankur Kumar a/w Adv. Ms. Saniya Anjum i/b EZY Laws.

For Corporate Debtor: Adv. Mr. Amir Arsiwala a/w. Adv. Mr. Shinke S. Nikhilesh, Adv. Mr. Swashtik V., Adv. Mr. Parth Davar, Adv. Mr. Faraaz Khan & Adv. Mr. Naman Kapoor.

O R D E R

PER: **Bench**

1. This is an Application filed under Section 7 of Insolvency and Bankruptcy Code, 2016 by ***Union Bank of India (hereinafter referred to as "the Financial Creditor")*** against ***Vitthal Corporation Ltd., (hereinafter referred to as "the Corporate Debtor")*** seeking commencement of CIRP, appointment of IRP and declaration of moratorium upon the Respondent.
2. Perusal of the Part I of the Application reveals that the Applicant is one ***Union Bank of India*** (hereinafter referred to as **"the Financial Creditor)** "having its registered Office at Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai-400021 through its Authorised Officer **Mr. Prashant Ramswami Surekar** duly authorised in this regard. The **Applicant** has its PAN as AAACU0564G and was incorporated on 11.11.1919.

3. Part II of the application reveals that the Corporate Debtor is one ***Vitthal Corporation Ltd.*** The Corporate Debtor is registered under CIN: U17120PN1998PLC012939 and was incorporated on 09.10.1998. The registered office of the Corporate Debtor is located at Flat no. 104 Suwarnanand Park, Plot no. 48-49 Laxmi Park colony, Navi Peth, Pune, Maharashtra, India - 411030.

4. Perusal of the Part III reveals that the Applicant has named **Mr. Ankur Kumar,** Office No. 1613, 16th Floor, C Wing, ONE BKC, G-Block, Plot No. C-66, Bandra Kurla Complex, Bandra East, Near Indian Oil, Mumbai Suburban, Maharashtra ,400051 Email ID: ***Ankur.srivastava@ezylaws.com*** having ***IP Registration No IBBI/IPA-002/IP-N00113/2017-18/10283.*** The proposed IRP has given his consent in Form No. 2 which is appended at Page No. 21 to 24. The AFA of the proposed IRP is valid till 31.12.2026.

5. Perusal of the Part IV reveals that Financial Creditor have granted Credit Facility of Rs. 30,00,00,000/- (Rupees Thirty Crores only) for financing farmers for cultivation of sugarcane under UGC Scheme and the corporate debtor has given a corporate guarantee dated 14.09.2016 for the said amount of Rs. 30,00,00,00.0/-. A statement detailing the dates of various disbursements is annexed and marked as ***Exhibit "D".***

6. The total amount of claim in default as on 31.08.2025 is an amount aggregating to Rs. 46,81,83,292.69/- (Rupees Forty-Six Crores Eighty-One Lakh Eighty-Three Thousand Two Hundred and Ninety-Two and Paise Sixty-Nine Only) being principal amount of Rs. 25,08,44,663.00/-

(Rupees Twenty-Five Crore Eight Lakh Forty-Four Thousand Six Hundred and Sixty-Three Only) including interest amounting to Rs. 21,73,38,629.69/- (Rupees Twenty-One Crores Seventy-Three Lakhs Thirty-Eight Thousand Six Hundred and Twenty-Nine and Paise Sixty-Nine Only) together with the applicable interest, penal interest, premia /charges etc., thereon at the contractual rates and terms until payment / realization to the satisfaction of Financial Creditor.

7. The Dates of default are stated as 31.01.2019 and 31.10.2019.
8. It is stated that the Date of NPA are 31.03.2021 and 30.04.2021 of respective accounts.
9. It is stated that the details of the computation of the aggregate outstanding amounts (including principal, penal interest and uncharged interest) under credit facilities is marked and annexed as ***“Exhibit- E”.***
10. Perusal of the Part V reveals that Corporate Guarantee dated 14.09.2016, executed by the Corporate Debtor for Rs. 30,00,00,000/- (Rupees Thirty Crores only), exclusive of interest thereon. The copy of Certificate of Registration of Charges with the Registrar of Companies and Index of Charges date 25.09.2025 as available on MCA website are annexed and marked as **Exhibit “F (Colly)”.** The copy of the record of default with the information utility is annexed and marked as **Exhibit- “G”.**
11. It is stated that the Guarantee Agreement dated 14.09.2016 was executed between the applicant and the respondent.

12. It is stated that the composite debit balance confirmation (with security) (SD-23) was executed on 28.02.2018.
13. It is stated that the demand letter is dated 26.04.2021.
14. It is stated that the copy of the One Time Settlement (OTS) Proposal dated 12.05.2023 was received by the applicant from the respondent.
15. It is stated that the copy of Statement of Accounts on sample basis of 15 accounts out of approx. 1500 accounts of principal borrowers, of principal borrower duly certified under the Bankers Books Evidence Act, 1891 showing the total outstanding amount in respect of the facilities provided by the Financial Creditor is annexed and marked as ***Exhibit "I"***. The remaining statements of account may be produced as and when required. The Bankers' Book Evidence certificate has also been annexed as **Exhibit "J".**
16. The Audited Annual Accounts of the Corporate Debtor for the Financial Year 2020-2021, 2021-2022, and 2022-2023 as available in the records of MCA are annexed and marked as **"Exhibit K (Colly)".**
17. It is stated that the Corporate Debtor is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacture, export and supply of sugar. The Financial Creditor had extended multiple credit facilities to farmers from time to time and the corporate debtor has given corporate guarantee dated 14.09.2016 of Rs. 30.0 crores in respect of the said facilities.
18. It is stated that the loan accounts were classified as- Non- Performing Asset (NPA) on 31.03.2021 and 30.04.2021. Despite repeated follow-

ups, the Corporate Debtor has failed to repay the outstanding amounts and is in continuous default.

19. It is stated that as on 31.08.2025, an amount of Rs.46,81,83,292.69/- is in default, comprising Rs.25,08,44,663/- as principal and Rs.21,73,38,629.69/- as interest and other dues.

20. It is stated that the Corporate Debtor in its capacity of corporate guarantor is liable to pay the amount in default and the accompanying Form-1 has been filed on account of the financial debt owed by the corporate debtor in terms of the corporate guarantee and default in its payment.

21. It is stated that the present application is within limitation. In view of the order passed by the Hon'ble Supreme Court in ***Re: Cognizance for Extension of Limitation,*** the period from 15,03.2020 till 28.02.2022 stands excluded for computation of limitation. Additionally, the Corporate Debtor had submitted a One Time Settlement (OTS) proposal on 12.05.2023, which though rejected, constitutes an acknowledgment of liability in writing as per Section 18 of the Limitation Act, 1963, giving rise to a fresh cause of action. Therefore, the present petition is well within the limitation. Hence this Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before this Hon'ble Tribunal.

22. Notice was issued by this Tribunal vide order dated 06.01.2026.

Additional Affidavit on behalf of the Applicant:-

23. The above captioned Company Petition was listed before this Hon'ble NCLT on 07.11.2025, wherein the Hon'ble NCLT was pleased to grant liberty to the Applicant to amend the Form - 1 with regard to the date of

default and to file the NeSL Record of Default by way of an additional affidavit. The NeSL Record of Default, was filed along with the additional affidavit as ***"Annexure-A"*** and ***"Annexure-B"*** respectively.

24. The applicant submits that dates of default are mentioned as 31.01.2019 and 31.10.2019. That upon detailed legal examination the Applicant respectfully submits that no amendment to the date of default mentioned in Form-1 is warranted or required in the present case. The date of default for the principal borrower and the Corporate Guarantor is identical in law, and therefore the date of default already stated in Form-1 is correct and complete.

25. That it is a settled position, of law that the liability of a guarantor is co-extensive with that of the principal borrower, as per Section 128 of the Indian Contract Act, 1872, and the guarantor's liability arises immediately upon the default committed by the principal borrower.

26. That the Hon'ble Supreme Court in ***Laxmi Pat Surana v. Union Bank of India & Anr., (2021) 8 SCC 481,*** has categorically held that the default of the principal borrower constitutes default of the corporate guarantor, and for proceedings under Section 7 of the IBC, the date of default remains the date on which the principal borrower first defaulted. The relevant paragraph is reproduced hereinunder:

    43: "... Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In

cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt..."

27. That the Applicant, therefore, respectfully submits that the dates of default already disclosed in the original Form-1, being the dates on which the principal borrowers committed default, shall also be construed as the dates of default for the Corporate Debtor. Hence, no amendment in the date of default is necessitated.

28. That Applicant further seeks leave of this Hon'ble NCLT to place on record the Notice of Invocation of Guarantee dated 14.12.2021, and humbly prays that the same may kindly be taken on record in the interest of justice. The copy of the Notice of Invocation of Guarantee dated 14.12.2021, is annexed and marked as **"Annexure -C".**

Reply on behalf of the CD :-

29. Reply was filed by the respondent through an affidavit dated 31.01.2026 affirmed by Mr. Sanjaymama Vitthalrao Shinde, authorised signatory. In reply following issues have been raised:-

    a. That the Financial Creditor/ Applicant herein granted a credit facility of Rs. 30 crores for financing 1500 individual farmers (" Principal Borrowers"). for cultivation of sugarcane vide Facility Agreement dated 14.09.2016 which was executed by the Principal Borrowers.

b. That thereafter to secure the Principal Borrowers, the Corporate Debtor executed a Deed of Guarantee on 14.09.2016, limiting the liability to a maximum of Rs. 30 Crores. A separate Memorandum of Guarantee dated 15.09.2016 was also executed between the parties specifically regarding onward lending to farmers for sugarcane cultivation.

c. That as per the Form 1 submitted by the Financial Creditor/ Applicant along with the Petition under Section 7 of the Code, the Principal Borrowers purportedly failed to meet their repayment obligations, resulting in the alleged default dates of 31.01.2019 and 31.10.2019. Consequently, the Financial Creditor classified these loan accounts as Non-Performing Assets ("NPA") on 31.03.2021 and 30.04.2021.

d. That following the alleged failure of the Principal Borrowers to pay instalments of principal amount and interest, the Bank issued a letter having Reference Number: - Solapur Main/ Credit/ 129-/2021-22 dated 26.04.2021, thereby calling upon the Corporate Debtor for repayment of dues.

e. That the Financial Creditor/ Applicant sought to invoke the Deed of Guarantee vide a formal letter having No. 1/21-22 dated 14.12.2021.

f. The Corporate Debtor denies all allegations and contentions raised in the said Petition under Section 7 of the Code, unless specifically

admitted herein. The petition is not maintainable and is liable to be dismissed in *limine* on the grounds given below:

GROUNDS:

30. **The petition is non-maintainable and liable to be dismissed due to the deliberate reliance on incorrect dates of default**

a. That the Applicant/Financial Creditor has erroneously and with mala fide intent, attempted to conceal the actual date of default, i.e. two days subsequent to the date of invocation of deed of guarantee on 14.12.2021 and instead very cleverly relied upon the dates of default of primary borrowers only to mislead this Hon'ble Tribunal.

b. That as per the Article 3.1 of the Guarantee deed dated 30.08.2016, the Respondent's liability as a Corporate Guarantor is triggered only upon a written demand. The said Article specifically provides that the Guarantor shall discharge the liability ***"two days after demand in writing"***. The said Article 3.1 of the Deed of Guarantee dated 30.08.2016 is reproduced as follows ***(emphasis added):***

"*3.1 Guarantor guarantees due repayment of all liabilities of the Borrower on Demand: The Guarantor hereby irrevocably and unconditionally guarantees to the Bank due payment and due discharge,* ***two days after demand in writing,*** *of all liabilities of the Borrower, whether present, future or contingent under Credit Facilities together with interest as agreed between the Bank. and Borrower."*

c. The Financial Creditor invoked the said guarantee vide a demand notice dated 14.12.2021. Therefore, the cause of action against the Corporate Debtor only arose two days after i.e. on 16.12.2021. The dates mentioned in the Petition pertain to the defaults of the Primary Borrowers i.e. the sugarcane farmers and cannot be transposed onto the Guarantor/Corporate Debtor to determine the limitation or maintainability of this application.

d. It is pertinent to mention here that the Applicant / Financial Creditor deliberately suppressed the Invocation Notice dated 14.12.2021 by failing to annex it initially to the Petition under Section 7 of the Code and Form-1. This vital document only surfaced subsequently as part of the Additional Affidavit dated 27.11.2025. This calculated omission was intended to mislead this Hon'ble Tribunal and conceal the material fact that the actual default occurred during a later period.

e. It is stated that this Hon'ble Tribunal, vide order dated 07.11.2025, expressly granted the Financial Creditor/ Applicant liberty to amend Form-1 to reflect the correct date of default. However, as recorded in the order dated 03.12.2025, the Financial Creditor categorically declined to revise the date of default. This refusal is a deliberate attempt to suppress the fact that the actual default occurred later on 16.12.2021, thereby misleading this Hon'ble Tribunal.

f. It is pertinent to mention here that the Applicant / Corporate Debtor's reliance on incorrect dates of default is not a mere technicality but a deliberate act to mislead this Hon'ble Tribunal.

g. It is stated that the Deed of Guarantee is a separate and distinct contract between the parties and as per the above-reproduced Article 3.1, the actual date of default is on 14.12.2021 and not the misleading dates mentioned by the Applicant in the Form 1. This principle is well-settled by the Hon'ble Supreme Court in Syndicate Bank v. Channaveerappa Beleri as reported in (2006) 9 11 sec 506, which held that when a guarantee is payable on demand, the limitation period begins only when a demand is made. The Relevant paragraph of the aforesaid judgement is reproduced hereinafter:

> *“But in the case on hand, the guarantee deeds specifically state that the guarantors agree to pay and satisfy the Bank on demand and interest will be payable by the guarantors only from the date of demand. In a case where the guarantee is payable on demand, as held in Bradford and Hartland, the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand."*

h. That further in ratio of Laxmi Pat Surana v. Union Bank of India as reported in (2021) 8 sec 481, the Hon'ble Supreme court clarified that while a Guarantor's liability is co-extensive, the default must be specifically established against the Guarantor. The Relevant Paragraph of the above-cited judgement is reproduced hereinafter (emphasis added):

"44. In the present case, NCLT as well as NCLAT have adverted to the acknowledgments by the principal borrower as well as the corporate guarantor-corporate debtor after declaration of NPA from time to time and lastly on 8.12.2018. The fact that acknowledgment within the limitation period was only by the principal borrower and not the guarantor, would not absolve the guarantor of its liability flowing from the letter of guarantee and memorandum of mortgage. The liability of the guarantor being coextensive with the principal borrower under Section 128 of the Contract Act, it triggers the moment principal borrower commits default in paying the acknowledged debt. This is a legal fiction. Such liability of the guarantor would flow from the guarantee deed and memorandum of mortgage, unless it expressly provides to the contrary."

i. It is further submitted that the reliance on an incorrect date of default is not a curable technicality but a substantive ground for dismissal, particularly when used to circumvent statutory mandates or the law of limitation. The Hon'ble Tribunal has consistently dismissed Section 7 petitions under such circumstances. It is submitted that such reliance on incorrect dates is a substantive ground for dismissal and has been discussed in ***CP(IB) No. 778/MB-VI/2023*** titled as ***Inakshi Sobti & Ors. vs. Starlight Systems (I) Pvt. Ltd.*** dated 05.01.2024, where the NCLT Mumbai Bench held that an amendment to the date of default cannot be allowed for mere asking if it is intended to nullify a statutory mandate.

j. The Applicant's wilful refusal to amend Form-1 to reflect the correct date of default post demand i.e. 16.12.2021, despite being granted

liberty by this Hon'ble Tribunal vide order dated 07.11.2025, constitutes wilful attempt to bypass statutory mandates. It is further stated that in judgement dated 03.05.2023 in ***J.C. Flowers Asset Reconstruction Pvt. Ltd. vs. Deserve Exim Pvt. Ltd.*** reported in ***NCLAT/MANU/NL/0413/2023,*** the Hon'ble NCLAT dismissed a petition where the creditor sought to use an incorrect date of default to avoid the Section 10A bar.

31. **The petition is ex-facie barred by limitation due to the applicant's deliberate reliance on wrong dates of default.**

a. It is submitted that a bare perusal of Part IV of Form 1 submitted by the Petitioner along with the Petition under Section 7 of IBC as well as the Additional Affidavit served upon the Corporate Debtor vide email dated 09.01.2026 reveal that the purported Dates of Default are 31.01.2019 and 31.10.2019, while the Dates of NPA are stated as 31.03.2021 and 30.04.2021 for the respective accounts.

b. It is a settled position of law that as per Article 137 of the Limitation Act, 1963, the limitation period for filing a petition under Section 7 of the IBC is three years from the date of default. The Hon'ble Supreme Court in B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633, has categorically held that the limitation period for insolvency applications is governed by Article 137 and begins specifically from the date of default. The relevant paragraph 42 of the above-said judgement is reproduced hereinafter:

"42. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the

inception of the Code, Article 137 of the Limitation Act gets attracted. The 'right to sue', therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."

c. It is further submitted that, in the present case, the three-year limitation period for the alleged defaults expired in January 2022 and October 2022, respectively whereas the present petition has been filed on 03.10.2025 which is well beyond the period of limitation.

d. That the Respondent/Corporate Debtor further submits that even if the benefit of the Hon'ble Supreme Court's Suo moto order in **Re: Cognizance for Extension of Limitation (2022) 3 SCC 117** is applied, the present Petition is hopelessly barred by time. The Relevant Para of the aforesaid order of the Hon'ble Apex Court is reproduced hereinafter:

"5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1 The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021 it is directed that the period from 15-3-2020 till 28-2-2022 shall

stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2 Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022."

e. That if the default occurred on 31.10.2019, the limitation period had 960 days remaining as of 15.03.2020. By excluding the period from 15.03.2020 to 28.02.2022 as per the ratio in ***Prakash Corporates v. Dee Vee Projects Ltd. (2022) 5 SCC 112***, the limitation period resumed on 01.03.2022 and ultimately expired on 15.10.2024. The Relevant portion of the aforesaid judgement is reproduced hereinafter:

"28. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23-3-2020, this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9- 2022, this Court specifically provided for exclusion of the period from 15-3-2020 till 2-10-2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in

> *relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government. The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed."*

f. It is further submitted that, assuming arguendo that the aforesaid OTS offer was a valid acknowledgment in terms of Section 18 of the Limitation Act, 1963, it still remains legally incapable of reviving a debt that had already been time-barred as held in ***M/s. State Bank of India v. M/s. Hackbridge Hewittic and Easun Limited (2023),*** the Hon'ble NCLT Chennai Bench, held that submitting an OTS proposal only within the limitation period constitutes an acknowledgment of debt. Similarly, in Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330, the Hon'ble Supreme Court held that an offer of OTS of a live claim, made within the period of limitation, can be construed as an acknowledgment to attract Section 18 of the Limitation Act.

g. It is submitted that Section 18 of the Limitation Act, 1963, stipulates that a fresh period of limitation commences from the date when party against whom the payment is sought to be recovered makes an acknowledgment in writing and signs it. However, Section 18 categorically clarifies that it only extends the period limitation

provided the acknowledgement is made within the already subsisting period of limitation. If a party makes an acknowledgment in terms of Section 18 beyond the period of limitation, then such a case would not be covered by Section 18, and the debt would be time barred, as in the present case.

h. That the attention of this Hon'ble Bench is invited towards the judgement of ***Sri Kapaleswarar Temple v. T. Tirunavukarasu (AIR 1975 MADRAS 164, 1987 MADLW 647),*** it was observed that an acknowledgement under Section 18 of the Limitation Act must be made on or before the date of expiry of the original limitation period to give effect to a fresh lease of life to the enforceability of the debt. The relevant extract of Section 18 is below:

> *"18. Effect of acknowledgment in writing. (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received Explanation .- For the purposes of this section,- (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property*

or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right, (b) the word "signed" means signed either personally or by an agent duly authorized in this behalf, and (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

i. That the Hon'ble Supreme Court in ***Sampuran Singh and Ors. v. Niranjan Kaur and Ors. (1999) 2 sec 6798,*** observed that the acknowledgment, if any, has to be prior to the expiration of the prescribed period for filing the suit, failing which it shall not lead to a fresh trigger of limitation period.

j. It is further submitted that the Suo Motu extension granted by the Hon'ble Supreme Court is an ameliorative measure intended only to protect the right of a litigant to institute an action; it does not enlarge the substantive prescribed period for the purpose of validly acknowledging a debt under Section 18 of the Limitation Act, 1963. An acknowledgment must be made within the already subsisting period of limitation to be valid. The Suo Motu order does not grant a fresh lease of life to Section 18 acknowledgments that are made after the original three-year window has closed.

k. That the Hon'ble Tribunal's attention is further invited towards The Hon'ble Supreme Court's judgement in ***Sagufa Ahmed v. Upper***

Assam Plywood Products (P) Ltd., *reported in* ***(202l) 2 SCC 317,*** specifically clarifying the narrow scope of these extensions in paragraphs 19-23, observing as follows:

> *"19. The principle forming the basis of Section 10(1) of the General Clauses Act, also finds a place in Section 4 of the Limitation Act, 1963 which reads as follows:*
> *"4. Expiry of prescribed period when court is closed - Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. Explanation. - A court shall be deemed to be closed on any ·day within the meaning of this section if during any part of its normal working hours it remains closed on that day."20. The words "prescribed period" appear in several sections of the Limitation Act, 1963. Though these words "prescribed period" are not defined in Section 2 of the Limitation Act, 1 963, the expression is used throughout, only to denote the period of limitation. We may see a few examples: 20.l. Section 3(1) makes every proceeding filed after the prescribed period, liable to be dismissed, subject however to the provisions in Sections 4 to 24. 20.2. Section 5 enables the admission of any appeal or application after the prescribed period. 20.3. Section 6 uses the expression prescribed period in relation to proceedings to be initiated by persons under legal disability. 21. Therefore, the expression "prescribed period" appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the prescribed period, during which the court or tribunal has the discretion to allow a person to*

institute the proceedings, cannot be taken to be "prescribed period". 22. In Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd. 4, this Court dealt with the meaning of the words "prescribed period" in paras 13 and 14 as follows: (SCC pp. 627-28) "13. The crucial words in Section 4 of the 1963 Act are "prescribed period". What is the meaning of these words? 14. Section 29(j) of the 1963 Act defines: "2. (j) "period of limitation" which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act." Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the "period of limitation" and, the therefore, not "prescribed period" for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the "period of limitation" or, in other words, "prescribed period", in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case." 23. Therefore, the appellants cannot claim the benefit of the order passed by this Court on 23-3-2020. for enlarging, even the period up to which delay can be condoned. The second contention is thus

untenable. Hence the appeals are liable to be dismissed. Accordingly, they are dismissed.

l. That furthermore the Court in Paragraph 17 emphasized that this benefit was intended for the vigilant/ rather than to provide a substantive reset of statutory windows:

"17. But we do not think that the appellants can take refuge under the above order in Cognizance for Extension of Limitation. What was extended by the above order of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of "which is vigilantibus et non dormientibus jura subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them."

m. This position is further fortified by the reasoning of the Hon'ble Calcutta High Court in judgement dated 03.09.2019 in TA No. 12 of 2019 with CS No. 1 77 of 2019 titled as ***IL & FS Financial Services v. Aditya Khaitan,*** which held that the Suo Motu extension 28 would not come to the benefit of a party who had already failed to act within the original statutory timelines. In light of the above, an acknowledgment under Section 18 must be made within the already

subsisting period of limitation to be valid. The Suo Motu order does not grant a fresh lease of life to Section 18 acknowledgments that are made after the original three-year window has closed, as the extension only preserves the right to file and does not extend the prescribed period during which a debt may be legally acknowledged.

Rejoinder by the Applicant: -

32. Affidavit in Rejoinder dated 12.02.2026 was filed by the Applicant herein duly affirmed by one **Mr. Prashant Ramaswami Surekar** Branch Manager of the Financial Creditor.

    a. It is submitted that the Corporate Debtor has not disputed the existence of the financial debt, the execution of the Deed of Guarantee dated 14.09.2016 or the subsistence of liability. Instead, the Reply raises technical objections concerning dates of default, limitation and procedural aspects of Form-1, in a deliberate attempt to defeat a legitimate insolvency action. Such objections run contrary to the scheme and object of the Code, which is a beneficial legislation intended to ensure timely resolution of insolvency upon occurrence of default.

    b. It is submitted that the proceedings under Section 7 are summary in nature and the Adjudicating Authority is required only to ascertain the existence of financial debt and occurrence of default. The Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank & Anr., (2018) I SCC 407*** has held as under:

> *"28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. ..."*

c. Therefore, elaborate attempts by the Corporate Debtor to create artificial disputes regarding dates or procedural formalities are wholly irrelevant when the debt and default stand established through documentary evidence including Memorandum of Understanding dated 15.09.2016, Guarantee Deeds dated 14.09.2016, account statements, guarantee invocation communication dated 14.12.2021 and One Time Settlement Proposal dated 12.05.2023.

33. **<u>Rejoinder to Ground A - Allegation of Incorrect Date of Default</u>**

a. That the Corporate Debtor has wrongly contended that its liability arose only two days after invocation of the guarantee and that the Financial Creditor cannot rely upon the dates of default of the principal borrowers. This contention is fundamentally flawed and contrary to statutory provisions and binding judicial precedents.

b. That Section 128 of the Indian Contract Act, 1872 unequivocally provides that the liability of a surety is co-extensive with that of the principal. The guarantee executed by the Corporate Debtor was unconditional and irrevocable and secured repayment of the facilities extended to the principal borrowers.

c. That the Hon'ble Supreme Court in ***Laxmi Pat Surana v. Union Bank of India & Anr., (2021) 8 SCC 481,*** has categorically held that the default of the principal borrower constitutes default of the corporate guarantor, and for proceedings under Section 7 of the Code, the date of default remains the date on which the principal borrower first defaulted. The relevant paragraph is reproduced hereinunder:

> *43: "... Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against. such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt..."*

d. That the Corporate Debtor has selectively relied on the said judgment while ignoring its core ratio. The judgment does not require a separate independent default for guarantors; rather, it recognizes that the guarantor's liability flows from the principal borrower's default. Therefore, the dates mentioned in Form-1 reflecting the borrower's default are legally valid and fully consistent with settled jurisprudence.

e. That the Corporate Debtor's argument that default arose only after the invocation letter dated 14.12.2021 is misconceived. Under Section 3(12) of the IBC, default is defined as non-payment of debt when due and payable. The Code does not make invocation of guarantee a prerequisite for default.

f. That even in contractual law, invocation may determine enforceability against guarantor but insolvency law focuses on the fact of non-payment of financial debt. Once the borrowers failed to repay instalments and the liability remained unpaid despite contractual obligations, default under the Code stood established.

g. The allegation that the Financial Creditor deliberately suppressed the invocation notice is categorically denied. The invocation notice dated 14.12.2021 forms part of the record and was duly produced through additional affidavit dated 27.11.2025.

h. That the Corporate Debtor's attempt to portray procedural filing of additional documents as suppression is therefore misleading and legally unsustainable.

i. That the Corporate Debtor has placed undue emphasis on alleged refusal to amend Form-1. It is submitted that Form-1 is a procedural document and minor discrepancies or multiple dates of default do not affect the substantive maintainability of a Section 7 Petition.

34. **<u>REJOINDER TO GROUND B— ALLEGED BAR OF LIMITATION</u>**

a. That the contention of the Corporate Debtor that the present Petition is barred by limitation is wholly misconceived, legally untenable and

contrary to binding precedents of the Hon'ble Supreme Court governing computation of limitation under the Insolvency and Bankruptcy Code, 2016 read with the Limitation Act, 1963.

b. That the Corporate Debtor has advanced an erroneous proposition that once the Financial Creditor relies upon the benefit of the Hon'ble Supreme Court's Suo Motu Orders extending limitation during the COVID-19 pandemic, the provisions of Section 18 of the Limitation Act cannot be invoked. Such a contention finds no support either in statutory Jaw or in judicial precedents and is liable to be rejected outright.

c. That as observed by the Hon'ble Supreme Court in ***B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633,*** the limitation period for filing a petition under Section 7 of the Code is governed by Article 137 of the Limitation Act and is three years from the date of default.

d. However, the computation of limitation cannot be undertaken in isolation without giving full effect to the binding directions issued by the Hon'ble Supreme Court in ***In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No. 3 of 2020,*** wherein the period from 15.03.2020 till 28.02.2022 was directed to be excluded for the purposes of limitation in all judicial and quasi-judicial proceedings. The said exclusion has the legal effect of enlarging the subsisting limitation period by excluding the specified duration.

e. That the One Time Settlement ("OTS") proposal submitted by the Corporate Debtor on 12.05.2023 constitutes a clear and unequivocal acknowledgment of debt within the meaning of Section 18 of the Limitation Act, 1963. The said proposal expressly admits the existence of liability and seeks restructuring and settlement of outstanding dues, thereby satisfying the statutory requirement of acknowledgment in writing signed by the debtor.

f. That the Hon'ble Supreme Court in ***Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330*** has categorically held that an OTS proposal made by a debtor acknowledging the subsisting debt constitutes a valid acknowledgment under Section 18 and gives rise to a fresh period of limitation. Such acknowledgments restart the limitation period and preserve the Financial Creditor's right to initiate insolvency proceedings.

g. That the Corporate Debtor's contention that the benefit of Section 18 cannot be claimed where the COVID exclusion orders are applied is fundamentally flawed. The two legal principles operate in entirely different domains.

h. That the Suo Motu orders passed by the Hon'ble Supreme Court merely govern the methodology for computation of limitation by excluding a specified period from calculation. In contrast, Section 18 of the Limitation Act confers a substantive statutory right whereby a fresh limitation period commences upon acknowledgment of liability made before expiry of limitation.

35. Written submissions have been filed by the Financial Creditor which have been considered.

36. Written submissions dated 19.02.2026 were also filed by the Corporate Debtor:-

    a. That the Hon'ble Supreme Court in ***B.K Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633,*** has categorically held that the limitation period for insolvency applications is governed by Article 137 and begins specifically from the date of default. In the case at hand, the three-year limitation period for the alleged default, expired on 31.01.2022, whereas the present petition was only filed on 03.10.2025. By excluding the period from 15.03.2020 to 28.02.2022 as per the ratio giving the benefit of Re: Cognizance for Extension of Limitation (2022) 3 SCC 117, the limitation period resumed on 01.03.2022 and ultimately expired on 17.01.2024. The following table enumerates the calculation of limitation period from the date of default relied upon by the Applicant, i.e. 31.01.2019:

Particulars	**Date**	**Basis**
Date of Default relied upon by Corporate Debtor	31.01.2019	Part IV of Form 1
Statutory Expiry	31.01.2022	Date on which the 3 years as per Article 137 expired.

COVID Exclusion Period	15.03.2020 - 28.02.2022	Exclusion Period as per **Re: Cognizance for Extension of Limitation (2022) 3 SCC 117.**
Resumption of Limitation	01.03.2022	Date of Limitation Period resumed.
Adjusted Expiry	17.01.2024	Expiry Date after COVID exclusion period.

b. It is further submitted that the OTS Offer dated 12.05.2023 is well beyond the prescribed period as per Article 137 of the Limitation Act, 1963, which had expired on 31.01.2022, after completing its 3-year window and is therefore legally incapable of reviving a debt that had already been time-barred. Section 18 of the Limitation Act, 1963, categorically states that it only extends the period limitation provided the acknowledgement is made within the already subsisting period of limitation. If a party makes an acknowledgment in terms of Section 18 beyond the period of limitation, then such a case would not be covered by Section 18, and the debt would be time-barred.

Analysis and Findings:-

37. We have heard both the sides and perused the documents as produced before us.

38. The Applicant Bank has filed this Application under Section 7 of the Code. It is the case of the Applicant that a sum of Rs. 30 crores was granted and disbursed to various farmers cultivating sugarcane under

UGC Scheme and the Corporate Debtor has given a Corporate Guarantee dated 14.09.2016 for the same.

39. It is stated by the Applicant that various farmers to whom loans were extended defaulted and the Applicant has invoked the guarantee through a demand letter dated 26.04.2021.

40. It is stated that the Corporate Debtor had given an OTS proposal dated 12.05.2023 to the Applicant herein.

41. The dates of default are mentioned as 31.01.2019 and 01.10.2019.

42. It is stated that since there were several farmers involved to whom the loans were given, the accounts of these farmers were classified as NPA on different dates and hence there are two dates of defaults. However, the invocation of the guarantee was once only i.e. through the demand letter dated 26.04.2021.

43. **<u>The Applicant has relied upon the following citations: -</u>**

a. *Laxmi Pat Surana v. Union Bank of India & Anr., (2021) 8 SCC 481,*

b. *Innoventive Industries Limited v. ICICI Bank Limited, (Civil Appeal Nos. 8337-8338 of 2017) (2017) 8SCR 33,*

c. *B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633,*

d. *B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633,*

e. *Suo Motu Writ Petition (Civil) No. 3 of 2020,*

f. *Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330.*

44. The Respondent in its reply has admitted execution of guarantee and its invocation. As such for the sake of brevity we are not elaborating the issue.

45. The main objections of the corporate debtor to the Application are as stated below :

    a. That the Applicant has concealed the actual date of default i.e. the two days subsequent to the date of invocation of deed of guarantee on 14.12.2021 and in its place has relied upon the dates of default of the principal borrower which were 31.01.2019 and 31.10.2019.

    b. The document for invocation of guarantee was placed by way of an additional affidavit dated 27.11.2025 and was not attached along with the application in order to mislead the tribunal and concealed the material fact that the actual default occurred during a later period. The financial creditor even declined to amend the date of default when an opportunity was given by the Adjudicating Authority as recorded in order date 03.12.2025.

    c. Petition is barred by limitation due to the applicant's deliberate reliance on wrong date of defaults. The respondent has stated that the three years limitation based on the default dates disclosed by the Applicant expired in January 2022 and October 2022 respectively, however, the petition has been filed on 03.10.2025. Respondent further states that even if the benefit of Hon'ble Supreme Court's suo-moto order is applied, the petition is time barred. It states that after exclusion of the period as per Hon'ble Supreme Court's order, the

limitation period expired on 15.10.2024. The respondent further submits that section 18 of Limitation Act, clarifies that it only extents the Limitation period provided the acknowledgement is made within the already subsisting period of limitation and that if a party makes an acknowledgement in terms of Section 18 beyond the period of limitation, then such a case would not be covered by Section 18. The Respondent has in this regard referred to the Judgment of Hon'ble Madras High Court in the matter of Sri. Kapaleswarar Temple v. Tirunavukarasu (AIR 1975 Madras 164, 1987 MADLW 647) wherein it was held that an acknowledgement under Section 18 of the Limitation Act must be made on or before the date of expiry of the original limitation period to give effect a fresh lease of life to the enforceability of the debt. In light of the same and certain other judgments cited by the Respondent including the judgment of Hon'ble Supreme Court in Sagufa Ahmed v. Upper Assam Plywood Products Pvt. Ltd. and of Hon'ble Kolkatta High Court in the matter of IL&FS Financial Services v. Aditya Khaitan in judgment dated 03.09.2019 in T.A. No. 12/2019 with CS No. 177/2019, the Respondent states that the suo-moto extension granted by Hon'ble Supreme Court is ameliorative measure intended only to protect the right of a litigant to institute an action, however, it does not enlarge the substantive prescribed period for the purpose of validly acknowledging a debt under section 18 of the Limitation Act.

46. **Respondent has relied upon the following citations: -**

a. Syndicaste Bank v. Channaveerappa Beleri,

b. Laxmi Pat Surana v. Union Bank of India,

c. Inakshi Sobti & Ors. v. Starlight Systems (I) Pvt. Ltd.,

d. J.C. Flowers Asset Reconstruction Pvt. Ltd. v. Deserve Exim Pvt. Ltd.,

e. B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates,

f. Prakash Corporates v. Dee Vee Projects Ltd.,

g. State Bank of India v. Hackbridge Hewittic and Easun Ltd.,

h. Dena Bank v. C. Shivakumar Reddy,

i. Sri Kapaleswarar Temple v. T. Tirunavukarasu,

j. Sampuran Singh v. Niranjan Kaur,

k. Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd.,

l. IL & FS Financial Services v. Aditya Khaitan,

47. As regards limitation a table has been given by the Respondent which is reproduced below:-

Particulars	**Date**	**Basis**
Date of Default relied upon by Corporate Debtor	31.01.2019	Part IV of Form 1
Statutory Expiry	31.01.2022	Date on which the 3 years as per Article 137 expired.

COVID Exclusion Period	15.03.2020 - 28.02.2022	Exclusion Period as per **Re: Cognizance for Extension of Limitation (2022) 3 SCC 117.**
Resumption of Limitation	01.03.2022	Date of Limitation Period resumed.
Adjusted Expiry	17.01.2024	Expiry Date after COVID exclusion period.

48. It is also an admitted position by the Respondent that an OTS offer was made by the Respondent on 12.05.2023. Respondent contends that the adjusted expiry date for filing present petition for the purposes of limitation is 17.01.2024.

49. We are of the view that the contentions of the Respondent qua the limitation and other objections are misplaced. We consider in the following paragraphs the main objections as summarized in paragraph 46 above:

a. Objection of the corporate debtor as summarized in para 46 (a) above: *That the Applicant has concealed the actual date of default i.e. the two days subsequent to the date of invocation of deed of guarantee on 14.12.2021 and in its place has relied upon the dates of default of the principal borrower which were 31.01.2019 and 31.10.2019*.

(i) The applicant has in the form-1 stated the dates of defaults as 31.01.2019 and 31.10.2019, which are based upon the defaults committed by the principal borrowers (i.e. by the individual farmers). The reason for the same as stated by the applicant is based on the judgment

of Hon’ble Supreme Court in the matter of Laxmi Pat Surana (supra) wherein Hon’ble Supreme Court has stated that “in cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt.” Further, as per section 126 of the Indian Contract Act, 1872 a contract of guarantee is defined in the following manner:

> “A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

(ii) As such, in the case of a contract of guarantee, the liability of a guarantor arises only in case of a default by the principal debtor and on occurrence of the said default by the principal debtor. In view of the Laxmi Pat Surana judgment (supra) and provisions of Section 126 of the Indian Contract Act, 1872, the relevant date of default which gives the right to the financial creditor to initiate action against the guarantor, gets trigged the moment the principal borrower commits default due to non-payment of debt. After the financial creditor acquires the said right against the guarantor, the process for recovery from the guarantor starts by issuance of a notice invoking the guarantee by the creditor i.e. by issuance of a notice by the

creditor to the guarantor demanding the payment of the outstanding for which the principal debtor has committed a default. Considering the same, the dates of defaults as mentioned in the Form-1 by the Applicant, being the dates of defaults committed by the principal borrower, cannot be treated as wrong.

b. Objection of the corporate debtor as summarized in para 46 (b) above: *The document for invocation of guarantee was placed by way of an additional affidavit dated 27.11.2025 and was not attached along with the application in order to mislead the tribunal and conceal the material fact that the actual default occurred during a later period. The financial creditor even declines to amend the date of default when an opportunity was given by the Adjudicating Authority as recorded in order date 03.12.2025.*

(i) Applicant has vide its additional affidavit dated 27.11.2025, placed a notice dated 14.12.2021 vide which the guarantee of the corporate debtor has been invoked. The said notice required the corporate debtor to make payment of the dues with respect to which a default has been committed by the principal borrowers. The additional affidavit dated 27.11.2025 was taken on record by this tribunal at the hearing held on 03.12.2025 and thereafter a notice was issued to the corporate debtor allowing it to file its reply to the same.

(ii) As such the notice for invocation of guarantee was placed by the applicant at its own vide the additional affidavit as referred to above even before the issuance of the notice to the respondent and before any objection is raised by the respondent in this regard. Moreover, the said notice was

taken on record by this tribunal at the hearing held on 03.12.2025 as part of the additional affidavit. In view of the same, we do not think that the said notice was not attached in order to mislead this tribunal or to conceal the material fact. In addition, by disclosing an earlier dates of defaults, the corporate debtor has failed to point out, as to what benefit the applicant has tried to take. For the above reasons, the said objection of the corporate debtor is hereby rejected.

c. Objection of the corporate debtor as summarized in para 46 (c) above:

Petition is barred by limitation due to the applicants deliberate reliance on wrong date of defaults. The respondent has stated that the three years limitation based on the default dates disclosed by the Applicant expired in January 2022 and October 2022 respectively, however, the petition has been filed on 03.10.2025. Respondent further states that even if the benefit of Hon'ble Supreme Court's suo-moto order is applied, the petition is time barred. It states that after exclusion of the period as per Hon'ble Supreme Court's order, the limitation period expired on 15.10.2024. The respondent further submits that section 18 of Limitation Act, clarifies that it only extents the Limitation period provided the acknowledgement is made within the already subsisting period of limitation and that if a party makes and acknowledgement in terms of Section 18 beyond the period of limitation, then such a case would not be covered by Section 18. The Respondent has in this regard referred to the Judgment of Hon'ble Madras High Court in the matter of Sri. Kapaleswarar Temple v. Tirunavukarasu (AIR 1975 Madras

164, 1987 MADLW 647) wherein it was held that an acknowledgement under Section 18 of the Limitation Act must be made on or before the date of expiry of the original limitation period to give effect a fresh lease of life to the enforceability of the debt. In light of the same and certain other judgments cited by the Respondent including the judgments of Hon'ble Supreme Court in Sagufa Ahmed v. Upper Assam Plywood Products Pvt. Ltd. and of Hon'ble Kolkatta High Court in the matter of IL&FS Financial Services v. Aditya Khaitan in judgment dated 03.09.2019 in T.A. No. 12/2019 with CS No. 177/2019, the Respondent states that the suo-moto extension granted by Hon'ble Supreme Court is ameliorative measure intended only to protect the right of a litigant to institute an action, however, it does not enlarge the substantive prescribed period for the purpose of validly acknowledging a debt under section 18 of the Limitation Act.

(i) It is well settled law that the limitation for initiation of any legal proceeding by the creditor against the corporate debtor commences when the corporate guarantor commits a default after invocation of guarantee by the creditor. In this regard it is relevant to refer to a judgment passed by Hon'ble Supreme Court in the matter of "*Syndicate Bank V. Channaveerappa Beleri & Ors., (2006) 11 SCC 506*" wherein Hon'ble Supreme Court has laid down that the limitation of the guarantor in a case where guarantee is payable on demand begins to run when the demand is made and the guarantor commits breach by not complying with the demand. The relevant portion of the said judgment is reproduced hereunder:

"9. A guarantor's liability depends upon the terms of his contract. A 'continuing guarantee' is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may be even time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. We have referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract.

10. Samuel (supra), no doubt, dealt with a continuing guarantee. But the continuing guarantee considered by it, did not provide that the guarantor shall make payment on demand by the Bank. The continuing guarantee considered by it merely recited that the surety guaranteed to the Bank, the repayment of all money which shall at any time be due to the Bank from the borrower on the

general balance of their accounts with the Bank, and that the guarantee shall be a continuing guarantee to an extent of Rs.10 lakhs. Interpreting the said continuing guarantee, this Court held that so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantor to carry out the obligation, the period of limitation could not be said to have commenced running.

11. But in the case on hand, the guarantee deeds specifically state that the guarantors agree to pay and satisfy the bank on demand and interest will be payable by the guarantors only from the date of demand. In a case where the guarantee is payable on demand, as held in the case of Bradford (supra) and Hartland (supra), the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand."

ii. In this case, the guarantee issued by the guarantor is also a guarantee payable on demand as can been seen from para 3.1 of the guarantee document dated *14.09.2016, as* attached on page No. 94 to 103 of the Application. The said para is reproduced hereunder:

3.1 Guarantor guarantees due repayment of all liabilities of the Borrower on Demand: The Guarantor hereby irrevocably and unconditionally guarantees to the Bank due payment and due discharge, two days after demand in writing, of all liabilities of the Borrower, whether present,

future or contingent under Credit Facilities together with interest as agreed between the Bank and Borrower.

iii. In this case, it is an admitted fact that the guarantee was invoked by the applicant vide its notice dated 14.12.2021. Even the corporate debtor has in its reply admitted that the date of invocation of deed of invocation of guarantee is 14.12.2021 and therefore, as per the deed of guarantee the date of default of the guarantor should have been 16.12.2021 i.e. two dates subsequent to the date of invocation of guarantee. Based on the same the corporate debtor has alleged that the wrong date of default as been mentioned in the application and that the correct date of default is 16.12.2021. However, the said objection of the Applicant has been dealt with in earlier part of the judgment. Considering that the guarantee was invoked on 14.12.2021, and that within three years of the date of invocations the corporate debtor has vide its One Time Settlement proposal dated 12.05.2023 made an acknowledgment of debt within the meaning of section 18 of the limitation Act, 1963, extended the limitation by a further period of three years from 12.05.2023. The present application, which has been filed on 03.10.2025, is therefore, within the limitation period.

50. Moreover, applying the judgment of the Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No. 3 of 2020***, (supra) the limitation got extended further and therefore we do not have any doubt about the fact that the application has been filed within the limitation period. The respondent has with the help of different judgments tried to establish that

an acknowledgement under Section 18 of the Limitation Act, should be made within the original limitation period and not during the limitation period as extended by Hon'ble Supreme Court vide the suo-moto Writ Petition No. 03/2020. However, the respondent has failed to establish the said legal position as none of the judgments cited by it deal with the claimed legal position. Rather the said judgements have supported the case of the Applicant that the acknowledgment of the debt should be within the period of limitation. The period of limitation in our view is after excluding the period as per the suo-moto petition order of Hon'ble Supreme Court.

51. Our above finding is supported by the decision of the Hon'ble Supreme Court in ***Dena Bank v. C. Shivakumar Reddy (Supra)*** wherein it was held that an OTS proposal made by a debtor acknowledging the subsisting debt constitutes the valid acknowledgement of debt. Since the present application was affirmed on 03.10.2025, the application is well within limitation.

52. We also hold that the Application filed by the applicant is complete as all the required documents and details have been attached/provided in the application.

53. Further, the debt claimed in this Application is Financial Debt within the meaning of IBC, 2016 and the debt is in default for an amount exceeding Rs. 1 crore, being threshold as prescribed under Section 4 of IBC, 2016.

54. In view of the facts as stated supra and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being

committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor. We also notice that the Application is complete as all the required details and documents are provided/attached. We also find that against the IRP proposed to be appointed under the Application, as per the consent form attached, no disciplinary proceedings are pending.

55. Further, the Hon'ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank Limited,*** (Civil Appeal Nos. 8337-8338 of 2017) (2017) 8SCR 33 has discussed extensively the scope of the power of the Adjudicating Authority under section 7 of the IBC and has held that the same is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred. The relevant portion of the said Judgment is reproduced below:

> *"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within*

which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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30. On the other hand, as we have seen, <u>in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.</u> It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise".

<u>ORDER</u>

56. As a consequence of the above analysis, the present Application being ***CP(IB)/1122/MB/2025*** is admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor.

57. In view of the forgoing, we order for commencement of Corporate the Insolvency Resolution Process against the Corporate Debtor herein in terms of the following.

    i. The Respondent/Corporate Debtor- ***Vitthal Corporation Ltd.,*** isadmitted in the Corporate Insolvency Resolution Process under Section 7 of the IBC, 2016.

    ii. As a consequence thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016:

        a. the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

        b. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

        c. any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

        d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;

e. The provisions of sub-section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to the Corporate Debtor.

iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

iv. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.

v. Since the Applicant has named an IRP, we hereby appoint ***Mr. Ankur Kumar***, having registration no ***IBBI/IPA-002/IP-N00113/2017-18/10283*** and e-mail ID ***ankur.srivastava@ezylaws.com***, (AFA valid till 31.12.2026) as the IRP of the Corporate Debtor.

vi. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016 It is further made clear that all personnel connected with the Corporate Debtor, its Promoters or any other person associated with the management of

the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

vii. This Adjudicating Authority directs the IRP to make a public announcement for the initiation of CIRP and call for the submission of claims under Section 15, as required by section 13(1)(b) of the IBC, 2016.

viii. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.

ix. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

x. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern, to the extent possible, as a part of obligation imposed by Section 20 of the IBC, 2016.

xi. **The Financial Creditor is directed to pay an advance of Rs. 3,00,000/-** (Rupees Three Lakhs Only) to the IRP within a period of 7 days from the date of this order **to meet the cost of CIRP** arising

out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.

xii. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

xiii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

xiv. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail.

58. **Accordingly, CP(IB)/1122/ MB/2025** stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-	Sd/-
SAMEER KAKAR	**NILESH SHARMA**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL**)**

//frk & ss//